91-1965
91-1965
(1)

Supreme Court, U.S.
FILED
MAY 12 1992
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

JOHN KENNA,

PETITIONER,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF CRIMINAL JUSTICE,

RESPONDENT.

Plaintiff's Petition For A Writ of Certiorari To The Superior Court of New Jersey Appellate Division

John Kenna
3306 92nd Street
Jckn Hts, N.Y. 11372
(718) 458 9406

(6)

Questions Presented for Review

1. Whether Fourth Amendment and Fourteenth Amendment rights under the Constitution of the United States of America and 42 U.S.C. sec. 1981, 42 U.S.C. sec. 1983, and 42 U.S.C. sec. 1984 are being denied by the entry into an order of the Superior Court of New Jersey, Appellate Division, a matter not under appeal, namely, survival of the action as provided by the trial court: plaintiff's right to enter a complaint so as to proceed summarily pursuant to New Jersey Rule 4:67-1(a) (A-5). Plaintiff had appealed the order of the trial court, which was entered on plaintiff's motion seeking relief from false statements placed in briefs filed in the Supreme

Court of the United States, and had availed himself of New Jersey Rule 4:67-1(a), which provides for summary action where the matter is for other than the recovery of penalties.

2. Whether the failure to include any rights guaranteed a complaining witness under the Fourth Amendment and the Fourteenth Amendment to the Constitution of the United States and under 42 U.S.C. sec. 1981, 42 U.S.C. sec. 1983, and 42 U.S.C. 1984 in New Jersey Rule 3:25 is a deprivation of those rights.

3. Whether an administrative dismissal of a criminal complaint under the minimum standards of New Jersey Rule 3:25-1(a) violates the aforesaid constitutional rights of the complaining witness.

4. Whether patent and gross abuse of discretion is a proper standard for determining whether a complaining witness may proceed to exercise rights guaranteed under the Fourth and Fourteenth Amendments to the Constitution of the United States.

TABLE OF CONTENTS

		Page
	Questions Presented for Review.	i
I.	Opinions Delivered in the Court for Which Review is Sought.	3
II.	Opinions Delivered in the Courts Below.	5
III.	Statement of Grounds on Which Jurisdiction of This Court is Invoked.	8
IV.	Constitutional Provisions, and Statutes Involved.	10
V.	Statement of the Case.	12
VI.	Stage of Proceedings Federal Issues Raised	15
VII.	Reasons Questions Require Argument.	16
VIII.	Conclusion.	18
IX.	Appendix.	19

TABLE OF AUTHORITIES

	Page
STATUTES CITED:	
New Jersey Rule 3:25	6, 10, 16
New Jersey Rule 4:67	2, 4, 5, 6, 7, 10, 17
42 U.S.C. sec. 1981	9, 11, 15
42 U.S.C. sec. 1983	9, 11, 15
42 U.S.C. sec. 1984	9, 11, 15
Fourth Amendment to the Constitution of the United States	9, 11, 15
Fourteenth Amendment to the Constitution of the United States	9, 11, 15
CASES CITED:	
LEONARDIS II, 71 71 New Jersey 360, 1960	7

==========

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

==========

JOHN KENNA,
PETITIONER,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY, DIVISION
OF CRIMINAL JUSTICE,
RESPONDENT.

==========

Plaintiff's Petition For A
Writ of Certiorari To The
Superior Court of New Jersey
Appellate Division

Plaintiff, John Kenna, respectfully requests that this Court grant the petition for writ of certiorari to review the judgment of the Supreme Court of New Jersey, denying certification, and of the Superior Court of New Jersey, Appellate

Division, denying plaintiff's right to enter a complaint and proceed summarily in accordance with the terms of New Jersey Rule 4:67-1(a) as acknowledged by the trial court so as to avoid calendar delay in pursuit of relief from false statements made in a brief filed in the Supreme Court of the United States.

I. COPIES OF OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW DELIVERED UPON THE RENDERING OF THE JUDGMENT BY THE COURT WHOSE DECISION IS SOUGHT TO BE REVIEWED, THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION.

The Superior Court of New Jersey, Appellate Division has affirmed the judgment of the Superior Court of New Jersey Law Division, by filing its findings with the clerk of that court on 14 November 1991 (A-1). In affirming the decision of the trial court that the plaintiff had not filed a civil complaint, the Appellate Court ruled that neither the allegations contained in the three criminal complaints, nor the allegations set forth in the affidavit

that had accompanied plaintiff's motion had met the requirements for commencement of a civil action. It rejected the trial court's ruling that the plaintiff may remedy the defect by filing a complaint and proceed by summary means under New Jersey Rule 4:67.

II. OPINIONS DELIVERED IN THE COURT BELOW.

The Superior Court of New Jersey, Law Division, entered its order (A-3) on plaintiff's motion after oral hearing held 12 September 1990 (A-4), ruling that:

(1) as no complaint has been filed with that Court as is required to commence a summary proceeding under New Jersey Rule 4:67-1(a), the motion is found to be incomplete, and

(2) as no patent and gross abuse of discretion has occurred in the review and administrative dismissal of City of Newark Complaint No. S453667 against Debra G. Lynch, Complaint No.

S453668 against Herbert H. Tate, Jr. and Complaint No. S453669 against Glenn D. Goldberg with the basis of the administrative dismissals both on May 16, 1990 and July 23, 1990 being placed in both sets of Reports to the Assignment Judge Pursuant to New Jersey Rule 3:25-1 (A-5), the three criminal complaints have been properly administratively dismissed.

The record (A-4) of that Court reveals that:

(1) to institute a summary proceeding pursuant to New Jersey Rule 4:67 requires there be on file a civil complaint. Allegations of wrongdoing in the form of a criminal complaint or

affidavit are not sufficient to commence an action, although, in the instant action, plaintiff has been granted the right to pursue Rule 4:67 and attack the State's action by the formal filing of a complaint (A-4).

(2) the test of the propriety of the administrative dismissal of a criminal complaint by the Prosecutor is the same as that involved in regard to a Prosecutor's failure to permit entry of a person into a pretrial intervention program; namely, whether the Prosecutor's action represents a patent and gross abuse of discretion, the standard applied in the Leonardis II opinion.

III. STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED.

On 14 November 1991, the Superior Court of New Jersey, Appellate Division, affirmed (A-1) the judgment of the Superior Court of New Jersey, Law Division (A-3) [rendered after oral hearing on 12 September 1990 (A-4)] that in the absence of patent and gross abuse of discretion by the prosecutor in dismissing criminal complaints (failure to contact the complainant deemed not to be such abuse), the complaints remain dismissed and do not form the basis of a civil complaint, which complaint must be constructed so as to conform to the exact

statute being violated. The Supreme Court of New Jersey denied a petition for certification of the judgment of the Superior Court of New Jersey, Appellate Division, by its order of March 14, 1992 (A-2). The jurisdiction of this Court is invoked under the Fourth and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. sec. 1981, 42 U.S.C. sec. 1983 and 42 U.S.C. sec. 1984.

IV. CONSTITUTIONAL PROVISIONS, AND STATUTES INVOLVED.

New Jersey Rule 4:67-1(a) (A-5) is available to those seeking summary relief to reverse wrongs other than those involving recovery of penalties. Petitioner availed himself of this rule to challenge action taken by the respondent pursuant to New Jersey Rule 3:25-1, dismissing complaints of false statements contained in a brief filed in the Supreme Court of the United States.

The trial court had ruled that plaintiff had not completed the process to institute a summary action under Rule 4:67-1(a); the papers filed did not meet the formal requirements for the filing of a civil complaint.

Plaintiff appealed the decision of the Superior Court, Law Division and that appeal resulted in an order dismissing the plaintiff's motion, whereby plaintiff was no longer able to enter a civil complaint as had been permitted by the trial court.

Plaintiff's petition for a writ of certiorati seeks intervention by the Supreme Court of the United States to rule on plaintiff's right to complete the process commenced in the trial court as is his right to invoke by authority of the Fourth and Fourteenth Amendments to the Constitution of the United States under 42 U.S.C. sec. 1981, 42 U.S.C. sec. 1983 and 42 U.S.C. 1984.

V. STATEMENT OF THE CASE

On 2 April 1990, plaintiff, John Kenna, filed three criminal complaints, nos. S453667, S453668, and S453669, by going into Newark Municipal Court and naming three prosecutors who had made false statements in a brief filed in the United States Supreme Court. The Attorney General, who is responsible to review the complaints, investigate if necessary, interview if necessary, so as to pursue the complaints as indictable offenses or refer them back to some municipal court, never contacted the complaining witness, and administratively dismissed the three complaints on May 16, 1990 without notifying the complaining witness. The administrative dismissal of the three

complaints was accompanied by the Attorney General's notification to the assignment judge that the false statements were not made to a law enforcement officer (the United States Supreme Court Judges deemed to not be in that category), and the Attorney General also notified the assignment judge that false statements were not made by the three defendants. On July 18, 1990, plaintiff filed a "Notice of Motion to Commence Summary Proceeding Under Rule 4:67-a(1)", and on July 24, 1990 the prosecutor amended its basis for the administrative dismissals to delete that portion of the original that had stated that false statements had not been made by the three defendants. The original dismissal form dated May 16, 1990

remained with the assignment judge.

On July 30. 1990, plaintiff wrote the assignment judge stating that the deletion did not mitigate the need for the hearing on the motion, and the hearing was held on September 12, 1990 with the State's letter memorandum of law dated August 10, 1990 and plaintiff's reply brief dated August 20, 1990 before the Court. The Superior Court of New Jersey, Law Division filed its order (A-3) on September 26, 1990, which plaintiff appealed on January 28, 1991, which appeal was denied (A-1), as was certification to the Supreme Court of New Jersey (A-2). On March 3, 1992, plaintiff filed a notice of petition for certiorari to seek review by the Supreme Court of the United States.

VI STAGE OF PROCEEDINGS FEDERAL ISSUES RAISED.

Federal issues were raised in the New Jersey Superior Court, Law Division in regard to rights of a citizen of the United States under the Fourth Amendment to the Constitution of the United States, the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. sec. 1981, 42 U.S.C. sec. 1983 and 42 U.S.C. sec. 1984 as shown in the Appendix at A-7 and further described as (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), and in all twenty-two points brought before the Superior Court of New Jersey, Appellate Division.

VII. REASONS QUESTIONS REQUIRE ARGUMENT

The matter involves:

questions as to the right of a complaining witness in the early stages of an action to equal protection under the law, whether those rights are violated under color of New Jersey Rule 3:25, custom or usage of the State of New Jersey to subject a citizen of the United Stated within its jurisdiction to dismissal of a right of action guaranteed under the Fourth Amendment and the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. sec. 1983,

questions as to whether under color of New Jersey Rule 3:25, custom or usage of the State of New Jersey a

citizen is denied the right to sue, be party, give evidence and to equal benefit of all laws and proceedings guaranteed under the Fourth Amendment and the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. sec. 1981,

questions as to whether a motion plaintiff brought under New Jersey Rule 4:67-1(a) has resulted in a proceeding, not identified by the trial court, subject to review under 42 U.S.C. sec. 1984.

VIII CONCLUSION

For the reasons stated above, Plaintiff, John Kenna, respectfully requests that this Court grant the Petition for Certiorari to the United States Court of Appeals.

Respectfully submitted,

John Kenna
Plaintiff

Dated:

		Page
A-1	Judgment of the Superior Court of New Jersey Appellate Division, affirming the decision of the Superior Court of New Jersey, Law Division.	20
A-2	Order of the Supreme Court of New Jersey denying plaintiff certification.	23
A-3	Judgment of the Superior Court of New Jersey, Law Division denying a summary proceeding pursuant to New Jersey R. 4:67 -1(a).	24
A-4	Opinions, Fact Finding, Conclusions of Law Showing Ground of Judgment of the New Jersey Superior Court, Law Division	27
A-5	New Jersey Statutes Cited.	32
A-6	Federal Authorities Cited.	41
A-7	Federal Issues Raised at Oral Hearing Below	45
A-8	Notice of Petition for Certiorari to the Supreme Court.	52

A-1 NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-1831-90T1

JOHN KENNA,

Plaintiff-Appellant,

v.

Original Filed
Nov 14 1991
Emille R. Cox,
Esq. Clerk

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE,

Defendant-Respondent.

Submitted October 30, 1991-Decided Nov 14 1991
Before Judges Brody and Landau.
On appeal from Superior Court of New Jersey, Law Division, Essex County.

John Kenna, appellant, filed a pro se brief. Robert J. Del Tufo, Attorney General, attorney for

respondent (Robert E. Bonpietro, Deputy Attorney General, of counsel and on the letter brief).

PER CURIAM

A civil action is commenced by filing a complaint. R.4:2-2. Plaintiff has not filed a complaint in this matter. He entitled his initial pleading "Notice of Motion To Commence Summary Proceeding Under Rule 4:67-1(a)." The trial judge correctly ruled in the first paragraph of the order appealed from that the motion was not properly before the court because plaintiff had not filed a complaint. 1 Although the judge's order did not expressly dismiss plaintiff's motion, dismissal is the only appropriate order that could be

entered in the circumstances.

The second paragraph of the order purports to adjudicate in defendant's favor the merits of what the judge believed were the underlying issues. Although it appears from the record that the issues plaintiff is trying to raise may be moot and that his standing to raise those issues is questionable, the dismissal precluded the trial judge from taking any further action. The order dismissing plaintiff's motion is affirmed.

==========

1 A complaint is not a mere formality. Had plaintiff composed and filed a complaint, and had defendant filed an answer, the underlying issues, if any, in this action would be more easily identified.

A-2 SUPREME COURT OF NEW JERSEY C-573
September Term 1991 34,492

JOHN KENNA,

Plaintiff-Petitioner,
v. ON PETITION
FOR
CERTIFICATION

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, etc.,

Defendant-Respondent.

F I L E D
Feb 14 1992
CLERK

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-1831-90T1 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 11th day of February, 1992.

CLERK OF THE SUPREME COURT

A-3 ROBERT J. DEL TUFO
ATTORNEY GENERAL OF NEW JERSEY BY:
JAMES J. RAYWOOD, JR.
DEPUTY ATTORNEY GENERAL
DIVISION OF CRIMINAL JUSTICE
LITIGATION SECTION
25 MARKET STREET, CN 085
TRENTON, NEW JERSEY 08625
(609) 984-4465

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION -ESSEX COUNTY

JOHN KENNA, Plaintiff v. STATE OF NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CRIMINAL JUSTICE Defendant.	CIVIL ACTION ORDER DENYING MOTION TO COMMENCE SUMMARY PROCEEDING UNDER R. 67-1(a)

This matter having been opened to the Court on the motion of John Kenna, plaintiff, appearing pro se, and James J. Raywood, Jr., Deputy Attorney

General, appearing for the State of New Jersey, and the Court having reviewed the moving papers and memorandum of law, and having heard arguments in open court, and good cause having been shown;

IT IS on this 26th day of Sept. 1990, ORDERED that the motion of John Kenna to commence a summary proceeding under R. 4:67-1(a) with regard to the City of Newark Complaint No. S453667, against Debra G. Lynch, S453668 against Herbert H. Tate, Jr. and S453669 against Glenn D. Goldberg is found to be incomplete, in that no complaint, as required by R. 4:67-1(a), has been filed with this Court, and no decision therefore has been reached on the merits of John Kenna's R. 4:67-1(a) claim.

IT IS FURTHER ORDERED that

as to the authority of the State of New Jersey, Department of Law and Public Safety, Division of Criminal Justice, under R. 3:25-1, to administratively dismiss the three (3) listed complaints, that no patent and gross abuse of discretion occurred in said review and that these complaints were, therefore, properly administratively dismissed, with the basis of the administrative dismissals, both on May 16, 1990 and July 23, 1990, being placed in both sets of Reports of the Prosecutor to the Assignment Judge Pursuant to R. 3:25-1.

Honorable Joseph A. Falcone, P.J.Cr.

A-4 OPINIONS, FACT FINDING, CONCLUSIONS OF LAW SHOWING GROUND OF JUDGMENT OF THE NEW JERSEY SUPERIOR COURT, LAW DIVISION.

THE COURT: In the Leonardis II opinion, the Supreme Court of New Jersey made it clear that the only way a Prosecutor's decision that someone should not get PTI (pretrial intervention) can be reversed by the Court if it represents a patent and gross abuse of the Prosecutor's discretion.

That's the standard. I firmly believe that the same standard which should be applied in what is before me, that is did the Prosecutor or the State in this case as represented by the Attorney General's Office, is its decision to administratively dismiss the

three complaints in question represent a patent and gross abuse of the Attorney General's discretion.

THE COURT: there is a procedure pursuant to Leonardis, for a Court to look at whether or not the Prosecutor's actions are sustainable or not. I only look to that area because I can find nothing specific with regard to any standard to be applied in this limited contention of an indictable complaint being dismissed under Rule 3:25-1 as was done here.

THE COURT: The only way that is required, in my experience, is the PTI program that must be, that decision must be forwarded to the Prosecutor's Office. The Prosecutor's Office then reviews the

matter and takes its own position. If the Prosecutor disagrees with the program director and the probation department, in effect saying that this person should not get PTI, that decision is only reversible if it was a patent and gross abuse of the Prosecutor's discretion.

THE COURT: The other aspect of it is Mr. Kenna's desire to proceed to challenge what was done in July of this year by way of dismissal under Court Rule 4:67, subject to Mr. Kenna's further comment in that regard that in order to proceed civilly, a civil action under Rule 4:2-2 must be commenced by filing of a complaint. Reference to filing of a complaint is also made under Rule 4:67.

When you look at 4:67-2A, that hasn't been done. In order for Mr. Kenna to proceed and have a court, whether it is this court or some other court in this complex, deal with the 4:67 attack, it must be done by commencement of a proper civil action by the filing of a complaint.

THE COURT: Your position under the statute set forth in the complaint against Prosecutor Tate and two Assistant Prosecutors, no matter what the facts are, they (sic) cannot be a conviction under the law?

MR. RAYWOOD: Correct.

THE COURT: I understand that.

THE COURT: You may wish to pursue

Rule 4:67 action and attack on the State's action in this matter.

You have apparently received some advice from some attorney or attorneys in that regard. I only suggest that if you wish t-o (sic) proceed in that vein, you may do so by the formal filing of a complaint with the Court and that will get that moving under that particular theory.

A-5 New Jersey Statutes Cited

New Jersey Rule 3:25. DISMISSAL

New Jersey Rule 3:25-1. Before or During Trial

Upon motion by the prosecuting attorney, an indictment, accusation or complaint, or any count thereof, may be dismissed prior to trial by order of (a) the Assignment Judge or (b) the judge to whom the same has been assigned for disposition, provided that such judge has previously sentenced the same defendant on one or more counts of the same indictment, accusation or complaint, or of another indictment, accusation or complaint. A complaint may also be administratively dismissed

by the prosecuting attorney, without presentation to the grand jury, in which event said prosecuting attorney shall report the dismissal and the basis therefore to the Assignment Judge and shall notify the defendant. During trial an indictment or accusation, or any count thereof, may be dismissed by the trial judge on motion by the prosecuting attorney and with the consent of the defendant.

New Jersey Rule 4:67. SUMMARY ACTIONS

New Jersey Rule 4:67-1. Applicability This rule is applicable (a) to all actions in which the court is permitted by rule or by statute to proceed in a

summary manner, other than actions for the recovery of penalties; and

(b) to all other actions in the Superior Court or a county court other than matrimonial actions and actions in which unliquidated monetary damages are sought, provided it appears to the court, on motion made pursuant to R. 1:6-3 and on notice to the other parties to the action not in default, that it is likely that the matter may be completely disposed of in a summary manner.

New Jersey Rule 4:67-2 Complaint; Order

to Show Cause; Motion

(a) Order to Show Cause. If the action is brought in a summary manner pursuant to R. 4:67-1(a), the complaint, verified by affidavit made pursuant to R. 1:6-6, may be presented to the court ex parte, except if the action is pending in the Law Division of the Superior Court or a county court, it shall be presented to the Assignment Judge or to such other judge as he designates. The court, if satisfied with the sufficiency of the application, shall order the defendant to show cause why

final judgment should not be rendered for the relief sought. The order shall be so framed as to notify the defendant fully of the terms of the judgment sought, and subject to the provisions of R. 4:52, it may embody such interim restraint and other appropriate intermediate relief as may be necessary to prevent immediate and irreparable damage.

(b) Motion for Order to Proceed Summarily.

Actions referred to in R. 4:67-1(b) shall be commenced, and proceedings taken therein, as

in other actions, except as herein provided.

The notice of motion to proceed summarily shall be supported by affidavits pursuant to R. 1:6-6 and, if addresses to the defendant, may be served with the summons and complaint; but it shall not be returnable until after the expiration of the time within which the defendant is required to answer the complaint. If the court is satisfied that the matter may be completely disposed of on the record (which may be supplemented by interrogatories,

depositions and demands for admissions) or on minimal testimony in open court, it shall, by order, fix a short date for the trial of the action, which shall proceed in accordance with R. 4:67-5, insofar as applicable.

New Jersey Rule 4:67-5. Hearing; Judgment; Briefs

The court shall try the action on the return day, or on such short day as it fixes. If no objection is made by any party, or the defendants have defaulted in the action, or the affidavits

show palpably that there is no genuine issue as to any material fact, the court may try the action on the pleadings and affidavits, and render final judgment thereon. If any party objects to such a trial and there may be a genuine issue as to a material fact, the court shall hear the evidence as to those matters which may be genuinely in issue, and render final judgment. At the hearing or on motion at any stage of the action, the court for good cause shown may order the action to proceed as in a plenary action

wherein summons has been issued, in which case the defendant, if he has not already done so, shall file his answer to the complaint within 20 days after the date of the order or within such other time as the court therein directs. In contested actions briefs may be submitted.

A-6 FEDERAL AUTHORITIES CITED

FOURTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1. Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Section 2. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1. All persons born or

naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. sec. 1981

Equal rights under the law.

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and

enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U.S.C. sec. 1983

Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United

States of other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. sec. 1984

Same; review of proceedings

All cases arising under the provisions of this Act in the courts of the United States shall be reviewable by the Supreme Court of the United States, without regard to the sum in controversy, under the same provisions and regulations as are provided by law for the review of other causes in said court.

A-7 FEDERAL ISSUES RAISED AT ORAL HEARING BELOW

(a) MR. KENNA: I filed what I would consider a criminal action and I am here today using a civil procedure to see that this criminal action goes forward.

(b) THE COURT: ..... That is, you are complaining and critical of the State's determination to move under the court rules to administratively dismiss the complaints filed against the three specific public officials referred to earlier, Prosecutor Tate and two of his assistants.

MR. KENNA: That's correct.

(c) THE COURT: ..... The Prosecutor decides, I want to pursue this case to the Grand Jury or to trial or I want to pursue it back in the municipal court and that person should not get the benefit of PTI --

MR. KENNA: Your Honor, can I say something ? You are talking about intervention and going back into a court. This matter here is a matter where a Prosecutor went to no court.

(d) MR. KENNA: .....I come in with a complaint which I think is far more serious, your Prosecutor in this case filing false statements with the U.S. Supreme Court and the response

I get is none. Nobody, you even mentioned yourself, nobody investigated the complaint. Nobody contacted me. It seems there is a rush to dismiss the complaint by the Prosecutor.

(e) MR. KENNA: Well, I filed a complaint.

THE COURT: Where is your complaint, sir?

MR. KENNA: The complaint is filed with Mr. Raywood.

(f) THE COURT: ..... You have to file a complaint. Do I make myself clear?

(g) MR. KENNA: Well, I will say

it again, you are saying I must file a complaint. I am saying we have had proceedings here. This particular matter was brought up over the phone with me. I said, if I need a complaint to be filed, which it was decided not to be filed at this point because we have a criminal complaint that's been ignored --

(h) MR. RAYWOOD: The State submits that under both the May and the July form that the bases for the dismissal were placed adequately in both reports to the Assignment Judge and the second matter took care of Mr. Kenna's contention in his affidavit, if not complaint, that the part about reaching a conclusion on

the merits that there was no lies made by the three charges prosecuting authorities had been deleted, and the State admits that the statute doesn't apply and that's all, and as far as the State need to go to dismiss these criminal complaints. There can be no charge regardless of truth or falsity because the stature does not fit the particular charge filed.

(i) MR. KENNA: There are three complaints. You have to go to a complaint of Prosecutor Tate. I don't know anything about him. He is the prosecutor. He has the ultimate responsibility for that complaint that was filed. I am complaining

about false statements that sit in the United States Supreme Court where I am going to bring back a matter after it goes through the agencies in the State of New Jersey. It is going to go back to the U.S. Supreme Court at some point and you are going to be telling that Court you are Federal employees. We can give you any kind of incorrect statement. The State of New Jersey is not going to do anything about that.....

Now, the Court will look at that argument and determine for itself whether false statements can be given to the U.S. Supreme Court by a Prosecutor and when somebody comes up with a complaint like that and

wants to get rid this brief with those statements in them, they will have to come back at that time and argue it and you say no. You decided that.

(j) MR. KENNA: Fine, yes sir. I want to know the appeal procedure to this proceeding.

THE COURT: I suggest you will have to order the transcript --

MR. KENNA: I will, but I want to know the title of the proceedings and the appeal procedure.

THE COURT: I can only refer you to the Court rules.

A-8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1991

==========

JOHN KENNA,

PETITIONER,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND
PUBLIC SAFETY,
DIVISION OF CRIMINAL JUSTICE,

RESPONDENT.

SIRS:

PLEASE take notice that the Plaintiff will petition the SUPREME COURT OF THE UNITED STATES for a WRIT OF CERTIORARI to seek

review by that Court of each and every part of Order Number A-1831-90T1 of the Superior Court of New Jersey entered by the Clerk of that Court on the fourteenth day of November 1991, which Order has been denied Certification by Order C-573 September Term 1991 Number 34,492 of the Supreme Court of New Jersey entered by the Clerk of the Supreme Court on the fourteenth day of February 1992.

Dated: March 3, 1992

John Kenna

33-06 92nd St
Jckn Hts, N.Y.
11372
(718) 458- 9406

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1991

JOHN KENNA,
PETITIONER,

v.

STATE OF NEW JERSEY,
DEPARTMENT OF LAW AND PUBLIC SAFETY,
DIVISION OF CRIMINAL JUSTICE,

RESPONDENT.

PROOF OF SERVICE

STATE OF NEW YORK)
) s.s.:
COUNTY OF)

, being duly sworn deposes and says that he served the within "Notice of Petition for Writ of Certiorari To The Superior Court of New Jersey, Appellate Division, upon counsel for the Respondent by

enclosing a copy thereof in an envelope, first class postage prepaid, addressed to:

State of New Jersey, Department of Law and Public Safety, Division of Criminal Justice
25 Market Street CN 085
Trenton, New Jersey 08625-0085

and depositing same in the United States mails in New York, New York on March 3, 1992.

Subscribed and Sworn to Before Me
this 3rd day of March 1992.